

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

AGIM BAFTIRI,

Petitioner,

vs.

UNITED STATES IMMIGRATION AND
NATURALIZATION SERVICES,

Respondent.

No. C01-0106-MWB

**REPORT AND RECOMMENDATION ON
MOTION TO DISMISS**

I. INTRODUCTION

This matter is before the court on the motion to dismiss and supporting brief (Doc. Nos. 6 & 7) filed by the respondent United States Immigration and Naturalization Services ("INS") on December 17, 2001. The motion was resisted by the petitioner Agim Baftiri ("Baftiri") on December 26, 2001. (Doc. No. 9) INS filed a reply on January 3, 2002. (Doc. No. 11) The court finds the motion now is ready for decision, and makes the following report and recommendation.

II. FACTUAL AND PROCEDURAL BACKGROUND

According to INS, Baftiri was convicted on May 4, 2000, after trial by jury, of four counts of distributing controlled substances. On July 21, 2000, he was sentenced to 60 months' imprisonment. (Doc. No. 7, p. 1) Baftiri appealed, and on August 30, 2001, the Eighth Circuit Court of Appeals affirmed the conviction. *United States v. Baftiri*, 263 F.3d 856 (8th Cir. 2001)

Baftiri currently is incarcerated in the Federal Medical Center at Rochester, Minnesota. He seeks relief from an INS detainer that was placed on him on August 29, 2000. In his complaint (Doc. No. 2), he alleges the detainer was "legal and correct" when lodged (Doc. No. 2, ¶ 4), but under the facts of his case, it should be lifted because "any reasonable person [would] conclude that Plaintiff will not be and is not a proper subject for deportation." (*Id.*, ¶ 5) According to Baftiri, the effect of the detainer is to impose added harm and punishment upon him because it denies him the right to be camp eligible, to earn a one-year reduction in his sentence for participation in a drug treatment program, to earn furloughs, to be in "out custody status," to serve part of his sentence in a half-way house, and to be released from custody on his release date. (*Id.*, ¶ 7)

III. ANALYSIS

INS argues a challenge to a detainer in federal court must be brought under title 28 U.S.C. § 2241, and jurisdiction for such a challenge is proper only in the district where a petitioner is confined (here, in the District of Minnesota). (Doc. No. 7, p. 2, citing *Rheuark v. Wade*, 608 F.2d 304, 305 (8th Cir. 1979)). Baftiri resists, arguing jurisdiction for a writ of habeas corpus under section 2241 lies either in the district of physical confinement or in the district in which a custodian against whom the petition is directed is present. (Doc. No. 9, p. 1, also citing *Rheuark, inter alia*) Baftiri states INS is the custodian against whom his petition is directed, and INS has offices, and is therefore present, in the Northern District of Iowa. In its reply brief, INS argues that by filing a detainer, it does not become a custodian of Baftiri, and Baftiri's custodian is in fact the Bureau of Prisons ("BOP").

Title 28 U.S.C. § 2241(a) provides, in relevant part: "Writs of habeas corpus may be granted by . . . the district courts . . . within their respective jurisdictions." Thus, this court has the jurisdiction to grant writs of habeas corpus only within the Northern District of Iowa. Baftiri is in the custody of the BOP in the District of Minnesota, so any request for habeas corpus relief from the BOP must be filed in that district. The question presented in this case is whether, by filing a detainer, the INS also becomes a "custodian" for purposes of habeas corpus relief.⁽¹⁾

This question was answered by the Eighth Circuit Court of Appeals in *Campillo v. Sullivan*, 853 F. 2d 593 (8th Cir. 1988). In *Campillo*, the court held:

In this case, Campillo seeks relief from the consequences of a detainer filed by the INS. The detainer, however, does not purport to effect Campillo's status as a sentenced federal offender, but merely notifies prison officials that a decision regarding his deportation will be made by the INS at some future date. The filing of such a document is insufficient, we believe, to alter Campillo's status as a custodial detainee of the federal prison system. Campillo may not challenge the detainer by way of habeas corpus until he is placed in the custody of the INS, an event which will not occur until Campillo is released from his present term of confinement. The filing of an INS detainer, standing alone, does not cause a sentenced offender to come within the custody of the INS for purposes of a petition for a writ of habeas corpus.

Campillo, 853 F.2d at 595; accord *Mohammed v. Sullivan*, 866 F.2d 258, 259 (8th Cir. 1989); *Perez-Ramirez v. Lindemann*, No. 01-1756, 2001 WL 1042187, slip op. at 1 (8th Cir. Sept. 12, 2001). Other courts agree that filing an INS detainer does not create "custody" for purposes of habeas corpus jurisdiction. See, e.g., *Walford v. INS*, 48 F.3d 477, 478 (10th Cir. 1995); *Roldan v. Racette*, 984 F.2d 85, 88 (2d Cir. 1993) ("clear majority view" that INS detainer "does not result in present confinement by the INS" (citing, *inter alia*, *Campillo*); *Santana v. Chandler*, 961 F.2d 514, 516 (5th Cir. 1992).

Because INS is not a custodian of Baftiri, his argument that his habeas corpus claim may properly be brought in the Northern District of Iowa must fail, and his petition must be dismissed for lack of jurisdiction.⁽²⁾

IV. CONCLUSION

For the reasons discussed above, **IT IS RECOMMENDED**, unless any party files objections⁽³⁾ to the Report and Recommendation in accordance with 28 U.S.C. § 636 (b)(1)(C) and Fed. R. Civ. P. 72(b) within ten (10) days of the service of a copy of this report and recommendation, that the motion to dismiss be granted, and judgment be entered in favor of the respondent and against Baftiri.

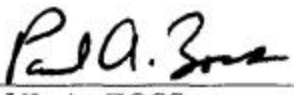
V. CERTIFICATE OF APPEALABILITY

A prisoner must obtain a certificate of appealability from a district or circuit judge before appealing from the denial of a federal *habeas* petition. *See* 28 U.S.C. § 2253(c). A certificate of appealability is issued only if the applicant makes a substantial showing of the denial of a constitutional right. *See Roberts v. Bowersox*, 137 F.3d 1062, 1068 (8th Cir. 1998).

The court finds Baftiri has failed to properly invoke this court's jurisdiction. Therefore, the court recommends a certificate of appealability not be granted.

IT IS SO ORDERED.

DATED this 9th day of January, 2002.



PAUL A. ZOSS
MAGISTRATE JUDGE
UNITED STATES DISTRICT COURT

1. A secondary question, not addressed here, is whether, even if INS were a "custodian" for purposes of habeas corpus relief, this action could be brought in the Northern District of Iowa simply because INS has offices in this district. If that were the case, such an action could be commenced in virtually any district in the United States. Logic would seem to dictate that jurisdiction would only lie in the district where the INS office that issued the detainer was located.

2. It also would appear Baftiri has no remedy for the harm caused to him by the policies of the BOP, under which he is denied certain benefits while serving his federal sentence as a result of the detainer. *See, e.g., United States v. Lopez-Salas*, 266 F.3d 842, 848 (8th Cir. 2001) (U.S. Supreme Court has held it is "within the BOP's discretion . . . to make rules categorically excluding certain types of inmates from receiving early release," citing *Lopez v. Davis*, 531 U.S. 230, 235, 121 S. Ct. 714, 719, 148 L. Ed. 2d 635 (2001)); *Walford v. INS*, 48 F.3d 477, 478 (10th Cir. 1995) (no due process violation when detainer prevents inmate from participation in certain prison programs).

3. Objections must specify the parts of the report and recommendation to which objections are made. Objections must specify the parts of the record, including exhibits and transcript lines, which form the basis for such objections. *See* Fed. R. Civ. P. 72. Failure to file timely objections may result in waiver of

the right to appeal questions of fact. *See Thomas v. Arn*, 474 U.S. 140, 155, 106 S. Ct. 466, 475, 88 L. Ed. 2d 435 (1985); *Thompson v. Nix*, 897 F.2d 356 (8th Cir. 1990).